

[Staff Directory](#)[FAQ's about PAF](#)[FAQ's about Fraud Investigation](#)  
[Contracts](#)[Fraud Prevention Policy](#)[Fraud Investigation Policy](#)[Chapter 49 Fraud Plan](#)[Fraud Investigative Service Invoice](#)[Fraud Programs](#)[Investigation Contract](#)[W-2 Fraud Statute](#)[Home](#) > **Fraud Investigation Policy**

## **Public Assistance Fraud (PAFS)**

### **Fraud Prevention Policy**

[Income Maintenance Manual](#)

#### **Chapter II Administrative Requirements**

##### **Part D Fraud & Intentional Program Violations**

Each section title in the index below will link you to the complete section page.

- [1.0.0](#) Introduction
  - [1.1.0](#) Structure
  - [1.2.0](#) Annual Fraud Plan
    - [1.2.1](#) Plan Requirements
    - [1.2.2](#) Model Program
  - [1.3.0](#) Legal Basis
  - [1.4.0](#) Notifying Client
  - [1.5.0](#) Definitions
- [2.0.0](#) Identifying Suspected Fraud/IPV
  - [2.1.0](#) Personal Rights
  - [2.2.0](#) Elements of Fraud
  - [2.3.0](#) Recipient Fraud
  - [2.4.0](#) Provider/Vendor Fraud
  - [2.5.0](#) Potential Fraud Identified
- [3.0.0](#) Referrals to Fraud Investigation
  - [3.1.0](#) Selection Criteria
  - [3.2.0](#) Referral
    - [3.2.1](#) Worker-Initiated
    - [3.2.2](#) Supervisory Review
  - [3.3.0](#) Referral Documentation
  - [3.4.0](#) Referral Tracking
  - [3.5.0](#) Referral Disposition
    - [3.5.1](#) Agency Determinations
- [4.0.0](#) Conducting Recipient Fraud Investigations
  - [4.1.0](#) Confidentiality
    - [4.1.1](#) Program Compliance
    - [4.1.2](#) Compliance Penalties
    - [4.1.3](#) Personal Rights
  - [4.2.0](#) Basic Investigative Plan
  - [4.3.0](#) Case Documentation
  - [4.4.0](#) Timeliness
  - [4.5.0](#) Satisfactory Investigations
  - [4.6.0](#) Corrective Action
  - [4.7.0](#) Restricted MA ID Card
- [5.0.0](#) Conducting Vendor/Provider Fraud Investigations
  - [5.1.0](#) Legal Basis
  - [5.2.0](#) Investigation Procedures
  - [5.3.0](#) Basic Investigative Plan
  - [5.4.0](#) Case Documentation

- [5.5.0](#) Timeliness
  - [5.6.0](#) MA Provider Fraud
  - [5.7.0](#) SLEB/Food Stamp Trafficking
- [6.0.0](#) Referral to Prosecution
  - [6.1.0](#) Local Agreements
    - [6.1.1](#) Referral Criteria
    - [6.1.2](#) Prosecution Timeliness
  - [6.2.0](#) Selection Criteria
  - [6.3.0](#) Referral Process
    - [6.3.1](#) Referral to District Attorney
    - [6.3.2](#) Food Stamps
  - [6.4.0](#) Court Decisions
    - [6.4.1](#) Court Orders
  - [6.5.0](#) Pre-Charge Diversion
    - [6.5.1](#) Pre-Trial Diversion
    - [6.5.2](#) Deferred Prosecution Agreement
  - [6.6.0](#) Disqualification
- [7.0.0](#) Administrative cost Reimbursement
  - [7.1.0](#) Conditions
- [8.0.0](#) Fraudulent Overpayment Recovery
  - [8.1.0](#) Recovery Notice
  - [8.2.0](#) Legal Referral
- [9.0.0](#) Local Agency Retention of Claims
  - [9.1.0](#) Payment Procedures
- [10.0.0](#) Fair Hearings
  - [10.1.0](#) Fact Finding Process
- [11.0.0](#) Administrative Penal Ties
  - [11.1.0](#) When to Use ADH
  - [11.2.0](#) Relationship to Fair Hearings
    - [11.2.1](#) Required Evidence
  - [11.3.0](#) Combined Hearing
  - [11.4.0](#) Rules for Combined Hearing
  - [11.5.0](#) Client Notices and Response
    - [11.5.1](#) Notice of Decision (Negative Notice)
    - [11.5.2](#) Notice of Administrative Disqualification Hearing
      - [11.5.2.1](#) Mailing of Notice of ADH
    - [11.5.3](#) Waiver of the Notice of the Administrative Disqualification Hearing
      - [11.5.3.1](#) Disqualification Required
  - [11.6.0](#) Administrative Disqualification Hearing
    - [11.6.1](#) Presiding Officer
    - [11.6.2](#) Client Rights
    - [11.6.3](#) Burden of Proof
    - [11.6.4](#) Selecting Evidence
    - [11.6.5](#) Presenting Evidence
    - [11.6.6](#) Privileged Information
  - [11.7.0](#) ADH Decision
    - [11.7.1](#) Notice of Disqualification
    - [11.7.2](#) Legal Relief
  - [11.8.0](#) Disqualification Through Consent Agreement
  - [11.9.0](#) Penalties
    - [11.9.1](#) W-2 Penalties
    - [11.9.2](#) FS Penalties
- [12.0.0](#) Disqualified Recipient Report
  - [12.1.0](#) Reporting Requirement
- [13.0.0](#) Office of Inspector General (OIG)
  - [13.1.0](#) Staff Resources

Click \*[here](#) to view the PDF version of the Fraud Investigation Policy.  
(282 KB PDF)

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---

[Back to top](#) | [About](#) | [Contact](#) | [Disclaimer](#) | [Privacy Notice](#) | [Feedback](#)



**Wisconsin Department of Health and Family Services**  
Making Wellness and Safety Happen!

[Staff Directory](#)[FAQ's about PAF](#)[FAQ's about Fraud Investigation](#)[Contracts](#)[Fraud Prevention Policy](#)[Fraud Investigation Policy](#)[Chapter 49 Fraud Plan](#)[Fraud Investigative Service Invoice](#)[Fraud Programs](#)[Investigation Contract](#)[W-2 Fraud Statute](#)[Home](#) > [Fraud Investigation Policy](#) > [Introduction](#)

## Public Assistance Fraud (PAFS)

### Fraud Prevention Policy

#### [Income Maintenance Manual](#)

### Chapter II Administrative Requirements Part D Fraud & Intentional Program Violations

#### 1.0.0 Introduction

Effective January 1, 1998, the Chapter 49 Fraud Program will be administered in all geographic areas of the state. The program will consist of early detection, fraud prevention, fraud investigation, and fraud overpayment collection activities.

As part of the responsibilities for ensuring the integrity of the benefit programs they administer, both Wisconsin Works Agencies (W-2A) and Economic Support Agencies (ESA) are to operate fraud prevention programs to identify and prevent fraud or error from occurring in their programs. The agency determining eligibility for a particular benefit program is responsible for fraud prevention activities in that program.

Agencies must differentiate between the routine verification for eligibility determination (Chapter I-Part C) conducted on all applications and re-determinations, the selection and activities used in the fraud prevention program (Chapter I-Part E), and the selection of cases for referral to fraud investigation. A clear separation of these activities is necessary for funding purposes as well as for establishing policies, guidelines, and effective procedures for each type of activity.

#### 1.1.0 Structure

The W-2A's, ESA's, and tribal agencies administering economic support programs are responsible for operating early fraud detection and prevention programs and the initiation of claims and collection of fraudulent overpayments. These agencies are also responsible for determining which cases shall be referred to the fraud investigation service provider, the Division of Hearings and Appeals for administrative disqualification hearings, and the District Attorney's Office for prosecution.

DWD will contract directly with investigation service providers to provide statewide fraud investigation services under Chapter 49 in all designated geographic areas established along county boundaries and federally recognized American Indian reservations.

With the exception of Milwaukee County, where the administration of W-2 is subdivided into 6 geographic areas, all contractors will be interfacing with 1 W-2A. In addition, contractors for some geographical areas will interface with an ESA.

#### 1.2.0 Annual Fraud Plan

Each agency participating in the Chapter 49 Fraud Program, including those operating fraud prevention, fraud collections, and fraud investigation activities, must complete and submit to the OIG an annual "fraud plan" based on a model fraud plan issued by the OIG. This annual plan must include a listing of its administrative responsibilities, program responsibilities, a budget, a description of the fraud program's structure,

including an organization chart, and position descriptions for the staff positions identified on the organizational chart.

### **1.2.1 Plan Requirements**

The requirements of the fraud plan are:

1. Develop a written policy for the operation of the fraud prevention program, including the selection process for identifying which cases are eligible for referral to the prevention program.
2. Validate the selection process periodically to ensure that the cases selected are error-prone.
3. Meet the fraud standard expectation of a 30% success rate.
4. Ensure that when a private agency is the service provider, that they meet the Wisconsin Department of Regulation and Licensing requirements for private detectives.
5. Ensure that service providers meet the federal requirement to identify themselves as representing the W-2/ES agency.
6. Maintain adequate audit documentation to support administrative cost claims.
7. Comply with all state and federal program standards and corrective action plans incorporated into the W-2/IM contracts and the Income Maintenance Manual (IMM).
8. Comply with all affirmative action, equal employment opportunity, and civil rights requirements referred to in the W-2/IM contracts. Tribal agencies are exempt from this requirement.

### **1.2.2 Model Program**

OIG recommends that the Front-end Verification (FEV) program (see Chapter I, Part E) be used as a model for the local fraud prevention programs. Local agencies have the discretion to design their prevention program to meet local circumstances. All fraud prevention programs must meet the fraud plan requirements of 1.2.1.

### **1.3.0 Legal Basis**

§49.197(1m), Wis. Stats., states:

"The department shall establish a program to investigate suspected fraudulent activity on the part of recipients of medical assistance under subch. IV, aid to families with dependent children under §49.19 and the food stamp program under 7 USC 2011 to 2036 and on the part of participants in the Wisconsin works program under §49.141 to §49.161."

§49.127 (Food Stamps), §49.141 (W-2), §49.49 (Medical Assistance) and §49.95 provide penalties for willfully making false representations related to acceptance of benefits and other acts interfering with proper program administration.

### **1.4.0 Notifying Client**

Notify applicants and recipients of the fraud provisions by:

1. Giving information sheets at the time of application and pointing out the provisions of the Application for W-2 programs, Medical Assistance, and/or Food Stamps (CAF).
2. Explaining the purpose and nature of public assistance and the intent and purpose of fraud provisions and penalties.

### **1.5.0 Definitions**

*Benefits:*

"Benefits" as used in Part D includes AFDC benefits, W-2 payments, FS allotments, MA benefits, and other services or assistance provided to a person or group because the person or group was found eligible for the benefit.

*CARES:*

The acronym used to identify the "Client Assistance for Re-employment and Economic Support" system, Wisconsin's automated eligibility determination, benefit calculation and management system for the AFDC, W-2, Food Stamp, and Medical Assistance programs.

*Chapter 49:*

That portion of Wisconsin Statutes which pertain to the Public Assistance Programs of the state.

*County Agency:*

The county under contract with the DWD to administer the assistance programs other than Wisconsin Works under Wis. Stats Chapter 49.

*Economic Support (ES):*

The term used in reference to the public assistance programs found in subchapter III of Chapter 49 [Aid to Families with Dependent Children (AFDC), Medical Assistance (MA) and Food Stamp (FS) programs]. This term replaces "income maintenance" references in these public assistance programs

*Economic support worker/specialist (ESS):*

A person employed by a county, a governing body of a federally recognized American Indian tribe or a Wisconsin works agency whose duties include determinations or re-determinations of income maintenance program eligibility.

*Financial and Employment Planner (FEP):*

The FEP is a case manager employed or contracted for a W-2 agency who provides: (1) eligibility determination, job readiness screening, employability planning; (2) financial and employment case management services; and (3) makes referral to other public or private assistance programs or resources.

*Fraud:*

Anyone who, with knowledge and purpose makes false statements, suppresses facts, or gives information which misrepresents true circumstances in order to become eligible or remain eligible for benefits under Chapter 49, Wis. Stats., commits fraud. These actions are the basis for intentional program violations (IPV).

A misrepresentation with intent to defraud may exist when an individual reports being unemployed during a period of time an employer reported earnings for that individual.

A misstatement due to an individual's misunderstanding on what constitutes income may not be considered fraud.

Negotiation of a check received in payment of benefits by a recipient after a change of facts that causes ineligibility is *prima facie* evidence of fraud.

*Fraud Investigative Referral:*

A formal request issued through a fraud referral document from CARES with supporting documentation in accordance with DWD requirements. A fraud referral is issued by a W-2 agency, county and tribal agency or the Office of Inspector General (OIG) to the investigative service provider. A fraud referral directs the service provider to conduct an investigation where there is documented information to suspect that violation in the economic support or works program administered by the DWD occurred contrary to Chapter 49. A clear statement of the possible/potential violation must be included in the request to allow the investigator to conduct fact finding to verify the allegation or determine willful intent to defraud.

*Income maintenance program:*

See economic support.

*Intentional Program Violation (IPV):*

- a. Under W-2 [?49.151(2)], if a court finds or it is determined after an administrative hearing that a member of a W-2 group applying for or receiving benefits under ?49.141 to ?49.161, has, for the purpose of establishing or maintaining eligibility for those benefits, intentionally violated on 3 separate occasions any provision in ?49.141 to ?49.161 or any rule promulgated under those sections, the W-2A may permanently deny W-2 benefits to that person.
- b. Food Stamp Program [7 CFR 273.16 (c)]. (1) Made a false or misleading statement or misrepresented, concealed or withheld facts, or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State

statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP's.

*OIG:*

The Office of Inspector General (OIG) is the state agency coordinating the Fraud Program. See 13.0.0.

*SSA:*

Social Security Administration.

*SSI:*

Supplemental Security Income. This is a needs-tested program administered by SSA providing benefits to persons who are blind, disabled, or elderly (65 or more years old).

*Tribal Agency:*

A tribal governing body under contract with DWD to administer the economic support programs under Chapter 49.

Wisconsin's Temporary Assistance to Needy Families (TANF) block grant program providing assistance to low income families in gaining or maintaining employment. W-2 is the program replacing Wisconsin's Aid to Families with Dependent Children (AFDC). See ?49.141 to ?49.161, Wis. Stats.

*W-2 Agency:*

A person, county agency, tribal governing body, or a private agency contracted under ?49.143, Wis. Stats., by DWD to administer the Wisconsin Works (W-2) program under ?49.141 to ?49.161, Wis. Stats., and Wisconsin Administrative Rule DWD 12.

[Next](#) — 2.0.0 Identifying Suspected Fraud/IPV

[Back](#) — Chapter 2 Index

Last Revised: *December 20, 2002*

---

[Back to top](#) | [About](#) | [Contact](#) | [Disclaimer](#) | [Privacy Notice](#) | [Feedback](#)



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[Staff Directory](#)[FAQ's about PAF](#)[FAQ's about Fraud Investigation](#)  
[Contracts](#)[Fraud Prevention Policy](#)[Fraud Investigation Policy](#)[Chapter 49 Fraud Plan](#)[Fraud Investigative Service Invoice](#)[Fraud Programs](#)[Investigation Contract](#)[W-2 Fraud Statute](#)[Home](#) > [Fraud Investigation Policy](#) > **Identifying Suspected Fraud/IPV**

## **Public Assistance Fraud (PAFS)**

### **Fraud Prevention Policy**

#### **Income Maintenance Manual**

### **Chapter II Administrative Requirements** **Part D Fraud & Intentional Program Violations**

#### **2.0.0 Identifying Suspected Fraud/IPV**

The intent and mental competence of the client are important elements in identifying suspected fraud. Misrepresentation with intent to defraud is probably present when a client reports being unemployed during a given period when in fact s/he received earnings from employment in the period identified. A misstatement due to the client's misunderstanding of what constitutes income may not be fraud.

#### **2.1.0 Personal Rights**

It is important to recognize the individual's rights as stated in Wisconsin Statute.

§49.81 provides this:

"Public assistance recipients' bill of rights: The department of health and family services, the department of work-force development and all public assistance and relief granting agencies shall respect rights for recipients of public assistance. The rights shall include all rights guaranteed by the US constitution and the constitution of this state, and in addition shall include: (1) The right to be treated with respect by state agents. (2) The right to confidentiality of agency records and files on the recipient. Nothing in this subsection shall prohibit the use of such records for auditing or accounting purposes. (3) The right to access to agency records and files relating to the recipient, except that the agency may withhold information obtained under a promise of confidentiality. (4) The right to a speedy determination of the recipient's status or eligibility for public assistance, to notice of any proposed change in such status or eligibility, and, in the case of assistance granted under s. 49.19, 49.46, 49.468 or 49.47, to a speedy appeals process for resolving contested determinations.

#### **2.2.0 Elements of Fraud**

All of the elements of the programs under Chapter 49 contain areas of potential fraud which are based on eligibility.

A potential fraud situation occurs when an allegation contains information that a recipient is engaging in, or has engaged in conduct that places his/her eligibility to the benefit in question. The allegation usually claims that the recipient has failed to comply with a benefit program regulation. Therefore, allegation(s) must be interpreted with the program eligibility criteria found in DES manuals, handbooks, memos, and similar communications of policy direction given the local ES and W-2 agencies.

Two critical indicators of fraud are:

1. Reluctance or refusal to provide needed information about income, resources, or relevant eligibility factors.



2. Failure to report change in eligibility circumstances.

### **2.3.0 Recipient Fraud**

Examples of benefit program recipient fraud are:

1. Collusion with a provider of benefit services to receive undue benefits/ payments (for example, child care, subsidized jobs, health care).
2. Concealing income or assets by failure to report ownership or acquisition:
  - a. Unreported income from jobs or from Unemployment Compensation, Social Security Benefits, Workers Comp.
  - b. Unreported assets or resources such as vehicles, savings accounts, etc.
3. Disposing of substantial assets without informing the agency.
4. Concealing circumstances or a change in circumstances which, if made known to the ESA, would have resulted in a decrease or discontinuance of the payment or other benefits.

For examples, failure to report a change in family composition, such as the return of the absent parent to the home or the departure of an eligible member from the home.

5. Misrepresenting the number and relationship of members of the family unit.
6. Abuse of the lost, stolen or destroyed benefits process (see II-A).

### **2.4.0 Provider/Vendor Fraud**

Provider and vendor fraud can occur in collusion with a participant or independently. Agency staff should be familiar with program regulations and be alert to conflicting conduct that violates program regulations as an indication of possible provider fraud. When appropriate, refer these allegations for investigation.

Examples of provider program fraud are:

1. Claiming compensation to provide program services which were not provided (child care, health care, jobs etc.)
2. Kickbacks, bribes and rebates.

### **2.5.0 Potential Fraud Identified**

Potential fraud may be identified by many sources, including:

1. Financial and Employment Planner (FEP), ES staff, and other agency personnel.
2. Complaints from general public.
3. Periodic audits of suspected provider fraud.
4. Use of computer databases:
  - a. CARES contains all cases applying for and receiving W-2, AFDC, MA, FS:
    1. Local agencies have access to CARES.
    2. DWD files, including wage and employer information for anyone with an employer in the state.
  - b. Federal agencies:

1. Social Security benefits.
2. Wage information.
3. IRS interest income from savings.
4. Unemployment benefits from other states.
5. Interstate Data Exchanges.
6. Match Wisconsin benefit recipients caseload against other states.

5. USDA Food & Consumer Services (FCS) personnel.

[Next](#) — 3.0.0 Referrals for Fraud Investigation

[Back](#) — 1.0.0 Fraud Investigation Introduction

Last Revised: *December 20, 2002*

---

[Back to top](#) | [About](#) | [Contact](#) | [Disclaimer](#) | [Privacy Notice](#) | [Feedback](#)



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[Home](#) > [Fraud Investigation Policy](#) > **Referrals For Fraud Investigation**

## Public Assistance Fraud (PAFS)

### Fraud Prevention Policy

#### [Income Maintenance Manual](#)

### **Chapter II Administrative Requirements Part D Fraud & Intentional Program Violations**

#### **3.0.0 Referrals For Fraud Investigation**

Agency staff must differentiate between the selection of cases for referral to fraud investigation (Chapter II-Part D), and the selection and activities used in the fraud prevention program (Chapter 1, Part E). A clear separation of these activities is necessary for establishing effective procedures for selecting cases for referral.

#### **3.1.0 Selection Criteria**

The purpose of a fraud investigation is to determine if the recipient of the benefit intended to misrepresent the eligibility. A careful examination of a case record by the agency administering the program is essential in determining whether it should be referred to the fraud investigation unit.

A fraud investigation referral should not be used in every case with questionable circumstances which pertain to eligibility determination or verification. These are early detection or fraud prevention activities and are the responsibility of the program administering agency.

These criteria should be present in most fraud prone cases; item 5 is the focus of a fraud investigation:

1. A benefit overpayment exists.
2. The agency has reason to believe the overpayment is the result of misrepresentation of program eligibility requirements.
3. The misrepresentation of program eligibility may be the result of:
  - a. False or misleading statements of circumstances.
  - b. Failure to report a change in circumstances.
4. The benefit(s) would not have been provided but for the results of the false representation.
5. The conduct of the benefit recipient indicates the misrepresentation was done with knowledge and intent.

#### **3.2.0 Referral**

Agencies are responsible for timely referral of participants receiving payment or services for investigation when fraud is suspected.

A supervisor initiates the fraud referral to the state-contracted investigation agency for investigation.

### **3.2.1 Worker-Initiated**

Cases where undue benefits have been made and have conditions of potential fraud identified by the worker are initiated on CARES and referred to the worker's supervisor for evaluation.

### **3.2.2 Supervisory Review**

The supervisor makes an assessment as to whether the case meets the agency's program integrity overpayment criteria, including cost effectiveness. For example, you would not want to refer a case for an investigation costing \$500.00 when the overpayment is \$300.00.

### **3.3.0 Referral Documentation**

The fraud referral contains all CARES-generated information identifying the recipient, a statement of the fraud allegation, and other relevant data the agency has including copies of:

1. The original application for assistance or Combined Application Form (CAF) of the suspect including:
  - a. The source and amount of any income.
  - b. An evaluation of the recipient's resources or assets.
2. Any Notice of Responsibility or program violation warnings given to and/or signed by the recipient at any time prior to or during the fraud period.
3. Identification of all ES programs the recipient is receiving.
4. All eligibility review information within the fraud period.
5. A statement of the estimated overpayment amount and period suspected.
6. DWD computerized benefit issuance history paid to the recipient during the fraud period.
7. A list of all workers involved with the recipient in this case.
8. A statement from the referring agency indicating the case file has been reviewed by the agency and reveals the recipient had not reported any eligibility determination requirement changes.

### **3.4.0 Referral Tracking**

All fraud investigation cases are tracked on CARES Benefit Recovery subsystem.

All investigation information is entered into CARES by the referral agency, including the information generated on screens BVIR and BVIT:

1. Name of primary person.
2. SSN.
3. Benefit programs involved and period of overpayment.
4. Identity of referring agency, worker, and investigation agency.
5. Investigation decision date.
6. Investigation completion date.

When the results of the investigation service provider's determination of intent and completed investigation report are returned to the referral agency, the local agency is responsible for closing the investigation referral.

Investigation costs are entered along with the completed investigation.

Although the investigation referral is closed the case continues to be tracked until final case disposition is determined and entered into CARES by the referral agency (screen BVPI).

### 3.5.0 Referral Disposition

The referral agency is responsible for initiating the processes for prosecution of fraud cases and the calculation and collection of fraudulent over-payments.

#### 3.5.1 Agency Determinations

Establish overpayment claims and initiate collection on all cases.

When the investigation reveals a person committed an act of intentional program violation (IPV), referral is made either:

1. To the District Attorney (DA) for prosecution(6.0.0); or,
2. For administrative disqualification proceedings (11.0.0).

[Next](#) — 4.0.0 Conducting Recipient Fraud Investigations

[Back](#) — 2.0.0 Identifying Suspected Fraud/IPV

Last Revised: *December 20, 2002*

---

[Back to top](#) | [About](#) | [Contact](#) | [Disclaimer](#) | [Privacy Notice](#) | [Feedback](#)



**Wisconsin Department of Health and Family Services**  
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[Staff Directory](#)[FAQ's about PAF](#)[FAQ's about Fraud Investigation](#)  
[Contracts](#)[Fraud Prevention Policy](#)[Fraud Investigation Policy](#)[Chapter 49 Fraud Plan](#)[Fraud Investigative Service Invoice](#)[Fraud Programs](#)[Investigation Contract](#)[W-2 Fraud Statute](#)[Home](#) > [Fraud Investigation Policy](#) > **Conducting Recipient Fraud Investigations**

## **Public Assistance Fraud (PAFS)**

### **Fraud Prevention Policy**

#### **Income Maintenance Manual**

### **Chapter II Administrative Requirements** **Part D Fraud & Intentional Program Violations**

#### **4.0.0 Conducting Recipient Fraud Investigations**

Develop a work plan for all case investigations to produce documentation according to the guidelines of the District Attorney's Office within the venue of jurisdiction for use in case prosecutions.

##### **4.1.0 Confidentiality**

It is most important that you adhere to DWD/DES confidentiality policies (II-Part B). Do not unnecessarily divulge any information about the client or reason for the investigation.

¶49.83, Wis. Stats. provides:

Except as provided under ¶49.32(9)(10)(10m), no person may use or disclose information concerning applicants and recipients of relief funded by a relief block grant, aid to families with dependent children, Wisconsin works under ¶49.141 to ¶49.161, social services, child and spousal support and establishment of paternity services under ¶49.22, or supplemental payments under ¶49.77, for any purpose not connected with the administration of the programs. Any person violating this subsection may be fined not less than \$25 nor more than \$500 or imprisoned in the county jail not less than 10 days nor more than one year or both.

##### **4.1.1 Program Compliance**

¶49.22(2m), Wis. Stats., authorizes agency staff to request information appropriate and necessary for the administration of the ES programs and ¶49.143(5) for W-2.

##### **4.1.2 Compliance Penalties**

¶49.95(2), Wis. Stats., provides that any person who willfully does any act designed to interfere with the proper administration of public assistance shall be fined not less than \$10 nor more than \$100 or be punished by imprisonment for not less than 10 nor more than 60 days.

##### **4.1.3 Personal Rights**

[See 2.1.0.](#)

##### **4.2.0 Basic Investigative Plan**

Using a checklist form, document items necessary in light of the alleged facts from the

complaint to be investigated:

1. Review the allegations contained in the complaint/investigation referral.
2. Formulate your plan objective. (Investigate to find evidence to substantiate the allegations of intentional program violation. Is there provable violation of Chapter 49 of Wis. Stats?).
3. Review the recipients case record and supporting referral documentation as provided (3.3.0 of this section). Determine what was the original basis of eligibility and does the record contain any notice to the program agency that the original circumstances changed.
4. Conduct case driven resource search. (Depending on the program and eligibility requirements, information resources can vary. *Examples*; check with the school for a child living in a household, or check with an employer for unreported work income, or check service provider records for appropriate payment documentation).
5. Conduct a personal search for witnesses such as neighbors or others and conduct interviews to obtain relevant information.
6. Review the results of the investigation and establish a tentative fraud period.
7. Interview the recipient's case worker assigned during the fraud period. Determine what independent recollection, if any, whether the recipient told them of a change in eligibility circumstances or what routine procedures would have been followed by the worker including documents generated for the case record. Establish if the worker can identify the recipient.
8. Interview the suspect/recipient regarding the allegations of subject complaint. The agency must give the individual opportunity to respond to the fraud allegation. Ask the current case worker to be present.
9. If complaint is substantiated, obtain certified copies under seal of appropriate documents to be used as evidence.
10. Return the satisfactory completed investigation to the referring agency.

#### **4.3.0 Case Documentation**

The investigation service must provide the referral agency with a written investigation report for each completed investigation. The report must document information in a logical sequence that incorporates who, what, when, where, why, and how in the body and substance of the investigative findings; it must address the specific allegation findings requested in the referral from the requesting agency.

The investigation report must contain the:

1. Identification of the client/contact person and verification of identity provided (for example, photo ID, drivers license).
2. Relationship of the contact person to the client.
3. Written interview(s) with the contact person documenting all relevant information.
4. Summary of the Investigator's findings.

Completed investigations must contain a summary conclusion having a recommendation to the referral agency to do one of these:

1. Proceed with a case for administrative disposition.
2. Proceed with a case that meets the criteria for prosecution established by the local District Attorney's office and recommend the prosecutorial process be initiated, but may be subject to administrative sanction, recoupment or repayment.
3. Return the case to the referring agency with the determination that the fraud allegation was not substantiated.

The referring agency will request that the investigation report must address the minimum criteria specified by the District Attorney's guidelines for fraud referrals for prosecution.

#### **4.4.0 Timeliness**

The time period from the date of the fraud investigation referral by the program referring agency to the date the fraud investigator's final report is delivered to the referral agency must not exceed 90 calendar days.

Investigations that exceed this 90 calendar day time frame will be out of compliance unless additional time is requested and approved. For such cases the investigating service provider will request in writing from the referring agency an extension stating the reason for the delay. The request will be reviewed and returned to the investigating agency indicating approval or denial. Requests must be submitted in writing for approval by the 80th calendar day to the referring agency.

#### **4.5.0 Satisfactory Investigations**

A satisfactorily completed investigation is determined by, but not limited to, these factors:

1. Quality of the investigation report and findings addressing the issues of the fraud referral allegations.
2. Documentation of all essential elements of the investigation.
3. Factual and accurately reported data.
4. Timeliness: Completion in 90 calendar days or within the agreed extended time frame.

If it is determined by the referral agency that any of these factors are lacking, the report may be ruled unsatisfactory and referred back to the investigation agency for corrective action.

The investigation agency may exercise the option to bring any unresolved matter concerning reports or any issue related to performance to the attention of the DWD for resolution.

#### **4.6.0 Corrective Action**

When notified by DWD in writing of the investigation service provider's failure to meet the performance requirements, the investigation service provider must present DWD with a corrective action plan within 5 business days that will include:

1. Specific description and identification of the deficiency.
2. For each deficiency:
  - a. An outline of corrective actions to be taken.
  - b. Description of expected outcomes of each action.
  - c. A target date for implementing the action plan.
  - d. A date by which deficiency will be corrected.

#### **4.7.0 Restricted MA ID Card**

When you suspect a recipient is misusing his/her MA card, send the recipient's name, card number, address, a summary of your suspicions, and any supportive documentation to:

Bureau of Health Care Financing  
P.O. Box 309  
Madison, Wisconsin 53701

Or you may call the Complaint Hot Line at 608-267-2521.

The Bureau of Health Care Financing will, if appropriate, issue a restricted card.

[Next](#) — 5.0.0 Conducting Vendor/Provider Fraud Investigations

[Back](#) — 3.0.0 Referrals For Fraud Investigation





**Wisconsin Department of Health and Family Services**  
Making Wellness and Safety Happen!

[Staff Directory](#)[FAQ's about PAF](#)[FAQ's about Fraud Investigation](#)[Contracts](#)[Fraud Prevention Policy](#)[Fraud Investigation Policy](#)[Chapter 49 Fraud Plan](#)[Fraud Investigative Service Invoice](#)[Fraud Programs](#)[Investigation Contract](#)[W-2 Fraud Statute](#)[Home](#) > [Fraud Investigation Policy](#) > **Conducting Vendor/Provider Fraud Investigations**

## **Public Assistance Fraud (PAFS)**

### **Fraud Prevention Policy**

[Income Maintenance Manual](#)

#### **Chapter II Administrative Requirements Part D Fraud & Intentional Program Violations**

##### **5.0.0 Conducting Vendor/Provider Fraud Investigations**

W-2 vendor/provider fraud can come to the attention of the referral agency in similar ways that recipient fraud will as outlined in 2.5.0. Documents are the essential source of evidence in these case types. Audits of the vendor/provider records, as provided by statute and contract, will be basis of a fraud referral investigation.

The W-2A and the State have the ability to pursue any entity in a civil or criminal action who receives funds to which they were not entitled. The W-2 agency contracts are specific regarding the responsibility of the W-2 agency to monitor its subcontractors and recover any overpaid amounts that resulted for any reason.

##### **5.1.0 Legal Basis**

§49.141, Wis. Stats., provides:

(6) PROHIBITED CONDUCT. A person, in connection with Wisconsin works, may not do any of the following: (a) Knowingly and willfully make or cause to be made any false statement or representation of a material fact in any application for any benefit or payment. (b) Having knowledge of the occurrence of any event affecting the initial or continued eligibility for a benefit or payment under Wisconsin works, conceal or fail to disclose that event with an intent fraudulently to secure a benefit or payment under Wisconsin works either in a greater amount or quantity than is due or when no such benefit or payment is authorized.

(7) PENALTIES. (a) A person who is convicted of violating sub. (6) in connection with the furnishing by that person of items or services for which payment is or may be made under Wisconsin works may be fined not more than \$25,000 or imprisoned for not more than 5 years or both. (b) A person, other than a person under par. (a), who is convicted of violating sub. (6) may be fined not more than \$10,000 or imprisoned for not more than one year or both.

(8) DAMAGES. If a person is convicted under sub. (6), the state has a cause of action for relief against the person in an amount equal to 3 times the amount of actual damages sustained as a result of any excess

payments made in connection with the offense for which the conviction was obtained. Proof by the state of a conviction under sub. (6) is conclusive proof in a civil action of the state's right to damages and the only issue in controversy shall be the amount, if any, of the actual damages sustained. Actual damages consist of the total amount of excess payments, any part of which is paid with state funds. In a civil action under this subsection, the state may elect to file a motion in expedition of the action. Upon receipt of the motion, the presiding judge shall expedite the action.

(9) KICKBACKS, BRIBES AND REBATES. (a) Whoever solicits or receives any remuneration in cash or in-kind, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Wisconsin works, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under Wisconsin works, may be fined not more than \$25,000 or imprisoned for not more than 5 years or both. (b) Whoever offers or pays any remuneration in cash or in kind to any person to induce the person to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Wisconsin works, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under any provision of Wisconsin works, may be fined not more than \$25,000 or imprisoned for not more than 5 years or both. (c) This subsection does not apply to any of the following: 1. A discount or other reduction in price obtained by a provider of services or other entity under chs. 46 to 51 and 58 if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under Wisconsin works. 2. An amount paid by an employer to an employee who has a bona fide employment relationship with the employer for employment in the provision of covered items or services.

(10) PROHIBITED CHARGES. (a) A provider may not knowingly impose upon a recipient charges in addition to payments received for services under Wisconsin works or knowingly impose direct charges upon a recipient in lieu of obtaining payment under Wisconsin works unless benefits or services are not provided under Wisconsin works and the recipient is advised of this fact prior to receiving the service. (b) A person who violates this subsection may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

### **5.2.0 Investigation Procedures**

Develop a work plan for all case investigations to produce documentation according to the guidelines of the District Attorney's Office within the venue of jurisdiction for use in case prosecutions.

### **5.3.0 Basic Investigation Plan**

Using a checklist form, document items necessary in light of the alleged facts from the complaint to be investigated.

1. Review the allegations contained in the complaint/investigation referral.
2. Formulate your plan objective. Investigate to find evidence

to substantiate the allegations of intentional program violation. That is, is there a provable violation within Chapter 49.

3. Review the supporting referral documentation as provided (see 3.3.0), including the service contract when applicable. Determine what was the original basis of eligibility or contract and does the record contain any notice to the program agency that the original circumstances changed.
4. Conduct case driven resource search.

Depending on the program and eligibility requirements, information resources can vary. For example, check with an employer for documented work hours or check child care service provider records for appropriate documentation.

5. Conduct a personal search for witnesses such as neighbors or others and conduct interviews to obtain relevant information.
6. Review the results of the investigation and establish a tentative fraud period.
7. Interview the recipient, if applicable, where services may have been provided during the fraud period. Determine what independent recollection, if any, the recipient told them of a change in eligibility circumstances or what routine procedures would have been followed by the worker including documents generated for the case record.
8. Interview the suspect/provider regarding the allegations of subject complaint.
9. If complaint is substantiated, obtain certified copies under seal of appropriate documents to be used as evidence.
10. Return the satisfactory completed investigation to the referring agency where a determination of case disposition will occur.

#### **5.4.0 Case Documentation**

The investigation service must provide the referral agency with a written investigation report for every completed investigation.

The report must:

1. Document information in a logical sequence that incorporates who, what, when, where, why, and how in the body and substance of the investigative findings.
2. Address the specific allegation findings requested in the referral from the requesting agency.
3. Contain the following information:

- a. Identification of the client/contact person and verification of identity provided (for example, photo ID, drivers license).
- b. Relationship of the contact person to the client.
- c. Written interview(s) with the contact person obtaining all relevant information and document same.
- d. Summary of the Investigator's findings.

4. Contain a summary conclusion having a recommendation

to the referral agency to do one of these:

- a. Proceed with a case for administrative disposition.
- b. Proceed with a case that meets the criteria for prosecution established by the local District Attorney's office and recommend the prosecutorial process be initiated, but may be subject to administrative sanction, recoupment or repayment.
- c. Return the case to the referring agency with the determination that the fraud allegation was not substantiated.

The referring agency will request that the investigation report must address the minimum criteria specified by the District Attorney's guidelines for fraud referrals for prosecution.

### **5.5.0 Timeliness**

The time period from the date of the fraud investigation referral by the program referring agency to the date the fraud investigator's final report is delivered to the referral agency must not exceed 90 calendar days.

Investigations that exceed this 90 calendar day time frame will be out of compliance unless additional time is requested and approved. For such cases the investigating service provider will request in writing from the referring agency an extension stating the reason for the delay. The request will be reviewed and returned to the investigating agency indicating approval or denial. Requests must be submitted in writing for approval by the 80th calendar day to the referring agency.

### **5.6.0 MA Provider Fraud**

If circumstances reveal a potentially fraudulent MA case involving a recipient and/or provider, compile the necessary data about MA claims paid to the recipient and provider and refer the case to:

Provider Audit Unit  
Bureau of Health Care Financing  
Department of Health and Family Services  
1 West Wilson Street  
P.O. Box 309  
Madison, Wisconsin 53701  
Phone: 608-266-5540

§ 49.495, Wis. Stats., provides jurisdiction of the Wisconsin Department of Justice relating to any prosecution of violations of criminal laws affecting the MA program. This designated unit is:

Medicaid Fraud Control  
123 West Washington Avenue  
P.O. Box 7857  
Madison, Wisconsin 53701  
Phone: 608-266-9222

### 5.7.0 SLEB/Food Stamp Trafficking

The State Law Enforcement Bureau (SLEB) program provides funding and food coupons to local law enforcement agencies to conduct food stamp trafficking investigation. Contact the State SLEB Manager at 608-266-9246] to determine if there is a SLEB investigation agency in your county or for information concerning the SLEB program.

Use the toll-free hotline at 800-424-9121 to report fraud, waste, or abuse committed by a retailer certified by USDA's Food and Consumer Service (FCS) to receive and redeem Food Stamp coupons.

[Next](#) — 6.0.0 Referral to Prosecution

[Back](#) — 4.0.0 Conducting Recipient Fraud Investigations

Last Revised: *December 20, 2002*

---

[Back to top](#) | [About](#) | [Contact](#) | [Disclaimer](#) | [Privacy Notice](#) | [Feedback](#)



**Wisconsin Department of Health and Family Services**  
Making Wellness and Safety Happen!



[Home](#) > [Fraud Investigation Policy](#) > [Referral to Prosecution](#)

## Public Assistance Fraud (PAFS)

### Fraud Prevention Policy

#### [Income Maintenance Manual](#)

#### **Chapter II Administrative Requirements Part D Fraud & Intentional Program Violations**

##### **6.0.0 Referral to Prosecution**

When the agency director (or designee) decides the case meets the criteria for prosecution, refer the case to the District Attorney.

##### **6.1.0 Local Agreements**

Agencies responsible for administering the public assistance programs in Chapter 49 are strongly encouraged to develop a Memoranda of Understanding (MOU) or other written agreements with their local District Attorney's Office to establish the conditions under which a referral for prosecution will be made.

The MOU or other written agreement with the District Attorney's Office should contain a selection criteria including documentation and format requirements for making a satisfactory referral to prosecution.

##### **6.1.1 Referral Criteria**

The following represent criteria recommended by the Wisconsin District Attorney's Association:

1. Documentation that the recipient signed the application/review form.
2. Documentation of sources and amounts of income and assets.
3. Documentation of relevant changes in the case circumstances.
4. Documentation that the recipient received more program benefits than s/he was entitled to.
5. Calculation of the amount of all overpayments subject to prosecution.
6. A written summary of an interview or an attempted interview with the recipient or the recipient's signed statement regarding the allegations.
7. The ES/W-2 agency's recommendation regarding restitution, including possible repayment by recoupment from on-going financial assistance benefits in accordance

### **6.1.2 Prosecution Timeliness**

Time limitations on initial determinations by the DA's Office are desired to ensure that referrals are dealt with timely and appropriately by the criminal justice system and/or the program administrative process. It is recommended that your memoranda of understanding include prosecution timelines. Here is an example:

1. Within 60 days after a fraud referral to the District Attorney's Office for prosecution by the ES/W-2 agency or its designee, the DA's Office shall review the referral and do one of the following:
  - a. Determine that the referral meets the criteria for prosecution established by the DA's Office and initiate the prosecutorial process established by that office; or
  - b. Notify the ES/W-2 agency that insufficient information is provided for the DA's Office to determine whether its criteria for prosecution are met and request the specific information needed to make that determination; or
  - c. Return the referral to the ES/W-2 agency for administrative disposition with the determination that it does not meet the criteria established by the DA's Office for pursuing criminal prosecution; or
  - d. Return the referral to the ES/W-2 agency with notation of the DA Office's discretionary decision not to pursue prosecution.
2. The District Attorney's Office will send a written disposition of each prosecution referral to the ES/W-2 agency within 10 working days after completion of the case. The written disposition will include the following information:
  - a. The conviction and sentence ordered or approved by the court.
  - b. The disqualification action ordered by the court.
  - c. The amount of overpayment charged.
  - d. The amount of overpayment read into the court decision, in addition to the amount charged.

### **6.2.0 Selection Criteria**

Make the referral after considering the factors described at 2.0.0 and after applying these criteria:

1. The misrepresentation or concealment was done knowingly and deliberately.
2. The purpose of the misrepresentation or concealment was to obtain program benefits to which the applicant or recipient wasn't entitled.
3. Had the facts which were misrepresented or concealed been made known to the agency, the program benefits



received by the applicant or recipient would have been denied, reduced or discontinued.

### **6.3.0 Referral Process**

The referral agency is responsible for initiating the process for prosecution of fraud and the collection of fraudulent overpayments. Each agency will make a determination of the process based on:

1. The completed investigation report supports the allegation of fraud.
2. The promptness of your investigation.
3. The case meets the local agency's policy and cost effective criteria.
4. The case meets the local DA's prosecution criteria.
5. Recommendation of the Investigation Agency.

The agency administering the benefit is responsible for addressing the guidelines specified by the DA of jurisdiction for prosecution.

Additional investigation documentation may be necessary for the final case disposition depending on the disposition type (trial vs. pre-trial diversion) and special case circumstances.

#### **6.3.1 Referral to District Attorney**

After the agency director (or designee) reviews the investigation report and determines the case qualifies for prosecutions, refer the case to the District Attorney.

Prepare the letter of referral to the District Attorney (DA) in duplicate. File the copy in the case record. Include in your letter:

1. A synopsis of the fraudulent activity.
2. The investigation summary supporting the allegation.
3. A list of supporting documentation.
4. All information obtained in the investigation.
5. Indicate the possibilities of restitution including any recommendation regarding repayment by way of deduction from the financial assistance payment according to state statutes.

#### **6.3.2 Food Stamps**

If the fraudulent activity involved the food stamp program, include with your referral to the DA a suggestion that the office recommend to the court a disqualification penalty, as provided in ?49.127(8)(d), (e), (f), Wis. Stats., be imposed in addition to any other civil or criminal fraud penalties (see 11.3.0).

### **6.4.0 Court Decisions**

When a court decides a recipient has committed fraud:

1. Continue the direct, protective, or vendor payment (if program eligibility continues).
2. Recover the overpayment in accordance with the amount

and method provided by ?49.127 for FS and ?49.161 for W-2.

If a court's determination that someone was guilty of IPV is later overturned or reversed by a superior court, immediately end his-her disqualification period. Restore any benefits denied him/her in the IPV disqualification period.

Generally, a court order for restitution affects only the fraudulent overpayment amount. This order does not affect a local agency's obligation to recover benefit overpayments under state and federal law. The basic obligation exists to recover all incorrectly paid amounts.

#### **6.4.1 Court Orders**

If a court doesn't impose a disqualification period for someone it finds has committed intentional program violation, initiate a disqualification period according (see 11.3.0) and ?49.127, unless doing so is contrary to the court's order.

#### **6.5.0 Pre-Charge Diversion**

Pre-Charge diversion is an alternative for anyone referred to the DA for an alleged IPV. It permits recovery of over issued benefits from the group member without the stigma of actual court prosecution.

The diversion can be used at the point in the legal process prior to the DA filing criminal charges with the court of jurisdiction. The Pre-Charge Diversion Agreement is a contract between the person agreeing to have committed IPV and the DA. The Agreement:

1. Includes a statement by the person that s/he did commit IPV;
2. Includes an agreement that s/he will make full restitution of all benefit over issuance resulting from the IPV;
3. Includes an agreement that s/he waive their right to an administrative disqualification hearing and agree to the appropriate program disqualification penalties;
4. May include an agreement that s/he will pay associated, assessed costs and any additional penalties.

Restitution payments are made directly to your agency by the offender, unless other arrangements are incorporated into the Agreement.

#### **6.5.1 Pre-Trial Diversion**

The Pre-Trial diversion is similar to the Pre-Charge agreement in that it is a contract between the person agreeing to have committed an IPV and the DA and includes the same stipulations listed in 6.5.0, "Pre-Charge Diversion". It is usually initiated after criminal charges have been filed before the court of jurisdiction. The agreement or contract requires the signature of approval by the judge.

The Pre-Trial diversion can be used at any point in the legal process that the DA or court wishes, including after the entry of a guilty or no contest plea by the defendant to the court.

### 6.5.2 Deferred Prosecution

This type of agreement is not an agreement or an order affecting DWD's Agreement rights as a creditor. It merely provide upon completion of performance of certain community service activities, that no further prosecution will occur. The local agency should recover the overpayment as it has calculated it and not be limited by the deferred prosecution agreement.

### 6.6.0 Disqualification

When an IPV has been determined by a court order, a pre-charge agreement or pre-trial diversion agreement, enter the IPV data immediately into CARES to ensure that the disqualification period begins within 45 days of the date of the determination.

Enter the IPV on CARES within 30 days of the date of the IPV determination. See the CARES Guide for further direction.

1. For FS IPV's, use screen AIIP.
2. For AFDC IPV's, use screen AIAP.

CARES will automatically calculate the disqualification period for the individual found guilty of an IPV based upon the time the data is entered on the system and the nature of the data entered. The system will also generate the required notices to the sanctioned individual and the case head.

[Next](#) — 7.0.0 Administrative Cost Reimbursement

[Back](#) — 5.0.0 Conducting Vendor/Provider Fraud Investigations

Last Revised: *December 20, 2002*

---

[Back to top](#) | [About](#) | [Contact](#) | [Disclaimer](#) | [Privacy Notice](#) | [Feedback](#)



**Wisconsin Department of Health and Family Services**  
Making Wellness and Safety Happen!

[Staff Directory](#)[FAQ's about PAF](#)[FAQ's about Fraud Investigation](#)  
[Contracts](#)[Fraud Prevention Policy](#)[Fraud Investigation Policy](#)[Chapter 49 Fraud Plan](#)[Fraud Investigative Service Invoice](#)[Fraud Programs](#)[Investigation Contract](#)[W-2 Fraud Statute](#)[Home](#) > [Fraud Investigation Policy](#) > [Administrative Cost Reimbursement](#)

## Public Assistance Fraud (PAFS)

### Fraud Prevention Policy

#### [Income Maintenance Manual](#)

### Chapter II Administrative Requirements Part D Fraud & Intentional Program Violations

#### 7.0.0 Administrative Cost Reimbursement

DWD will reimburse local agencies their actual cost of fraud activities for allowable costs up to the funding allocations established by contract and identified in their Fraud Plan Budget. Additional federal matching dollars in excess of the allocated amounts are available for food stamps and medical assistance fraud activities with county participation. No matching dollars are available under the Temporary Assistance for Needy Families (TANF) program.

Funding has been included in the W-2 administrative budget of all W-2 agencies to conduct a prevention and collection program. The W-2 contract requires the operation of a prevention and collection program. The W-2 agency is expected to allocate sufficient funds to achieve the goals of the prevention and collections program. The amount of funds to operate prevention and collection programs is at the discretion of the county and tribal agency.

#### 7.1.0 Conditions

To receive cost reimbursement for fraud investigation administrative costs, the investigative agency must perform a satisfactory investigation. A satisfactory completed investigation is defined in section 4.5.0.

[Next](#) — 8.0.0 Fraudulent Overpayment Recovery

[Back](#) — 6.0.0 Referral to Prosecution

Last Revised: *December 20, 2002*

[Back to top](#) | [About](#) | [Contact](#) | [Disclaimer](#) | [Privacy Notice](#) | [Feedback](#)



**Wisconsin Department of Health and Family Services**  
Making Wellness and Safety Happen!

[Staff Directory](#)[FAQ's about PAF](#)[FAQ's about Fraud Investigation](#)  
[Contracts](#)[Fraud Prevention Policy](#)[Fraud Investigation Policy](#)[Chapter 49 Fraud Plan](#)[Fraud Investigative Service Invoice](#)[Fraud Programs](#)[Investigation Contract](#)[W-2 Fraud Statute](#)[Home](#) > [Fraud Investigation Policy](#) > **Fraudulent Overpayment Recovery**

## **Public Assistance Fraud (PAFS)**

### **Fraud Prevention Policy**

#### **Income Maintenance Manual**

### **Chapter II Administrative Requirements** **Part D Fraud & Intentional Program Violations**

#### **8.0.0 Fraudulent Overpayment Recovery**

Fraud overpayments are those benefit overpayments determined as a result of an IPV finding by:

1. A court of jurisdiction.
2. Result from an administrative disqualification hearing.
3. Follow the recipient's signed consent agreement to waive either a court action (see 11.8.0) or administrative disqualification hearing (see 11.5.3).

The agency may recover only the amount incorrectly paid to the recipient.

#### **8.1.0 Recovery Notice**

Refer to the CARES Guide, Chapter VIII, for creating an overpayment and benefit recovery notice and process.

#### **8.2.0 Legal Referral**

If the notice doesn't bring about a recovery of the incorrect payment, refer the case to your district attorney or corporation counsel. Either may bring appropriate action for prosecution for fraud or collection under civil liability statutes.

If a judgment is obtained by such an action but not satisfied at the time it or an order for restitution is made, assist your district attorney or corporation counsel in filing a lien against the recipient's assets.

[Next](#) — 9.0.0 Local Agency Retention of Claims

[Back](#) — 7.0.0 Administrative Cost Reimbursement



**Wisconsin Department of Health and Family Services**  
Making Wellness and Safety Happen!

[Staff Directory](#)[FAQ's about PAF](#)[FAQ's about Fraud Investigation](#)  
[Contracts](#)[Fraud Prevention Policy](#)[Fraud Investigation Policy](#)[Chapter 49 Fraud Plan](#)[Fraud Investigative Service Invoice](#)[Fraud Programs](#)[Investigation Contract](#)[W-2 Fraud Statute](#)[Home](#) > [Fraud Investigation Policy](#) > **Local Agency Retention of Claims**

## Public Assistance Fraud (PAFS)

### Fraud Prevention Policy

#### [Income Maintenance Manual](#)

#### **Chapter II Administrative Requirements** **Part D Fraud & Intentional Program Violations**

##### **9.0.0 Local Agency Retention of Claims**

Agencies may retain 15% of monies collected from benefit overpayments distributed under sections 49.19, 49.132, 49.155, 49.148, 49.153 or ?49.157.

Agencies may retain 15% of the amount of an overpayment the state is authorized to retain for FS claims recovered under ?49.125(2), Wis. Stats.

The 15% retention of monies recovered by the agencies are due to the efforts of an employee or officer of the county, tribe or W-2 agency, unless the overpayment benefits were provided as a result of state, county, tribal governing body or Wisconsin works agency error.

##### **9.1.0 Payment Procedures**

See the DES Accounting Manual for reporting procedures for agencies to retain payments recovered.

[Next](#) — 10.0.0 Fair Hearings

[Back](#) — 8.0.0 Fraudulent Overpayment Recovery

Last Revised: *December 20, 2002*

---

[Back to top](#) | [About](#) | [Contact](#) | [Disclaimer](#) | [Privacy Notice](#) | [Feedback](#)



**Wisconsin Department of Health and Family Services**  
Making Wellness and Safety Happen!

[Staff Directory](#)[FAQ's about PAF](#)[FAQ's about Fraud Investigation](#)[Contracts](#)[Fraud Prevention Policy](#)[Fraud Investigation Policy](#)[Chapter 49 Fraud Plan](#)[Fraud Investigative Service Invoice](#)[Fraud Programs](#)[Investigation Contract](#)[W-2 Fraud Statute](#)[Home](#) > [Fraud Investigation Policy](#) > [Fair Hearings](#)

## Public Assistance Fraud (PAFS)

### Fraud Prevention Policy

#### [Income Maintenance Manual](#)

#### Chapter II Administrative Requirements

#### Part D Fraud & Intentional Program Violations

##### 10.0.0 Fair Hearings

The recipient may request a fair hearing concerning your determination of ineligibility and/or your calculation of the amount of benefits improperly paid. If one is requested, suspend all recovery actions until a decision is rendered in that appeal. If benefits are continued while a decision on the fair hearing is pending, add those payment amounts to the collection total:

1. If the hearing decision is not favorable to the recipient; and,
2. The recipient wasn't otherwise eligible for benefits at the time the benefit/service was provided.

##### 10.1.0 Fact Finding Process

§49.152, Wis. Stats, provides for a dispute resolution or fact finding process for applicants or participants to request the W-2 agency for review of the agency's action. The fact finding process replaces the current fair hearing process for AFDC applicants and recipients under §49.21. §402(a)(B)(iii) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193) provides that a state must include in its state plan an explanation of how the state will provide for recipients to be heard in a state administrative or appeal process. Refer to the fact finding process in the Wisconsin Works Manual.

[Next](#) — 11.0.0 Administrative Penalties

[Back](#) — 9.0.0 Local Agency Retention of Claims

Last Revised: *December 20, 2002*

[Back to top](#) | [About](#) | [Contact](#) | [Disclaimer](#) | [Privacy Notice](#) | [Feedback](#)



**Wisconsin Department of Health and Family Services**  
Making Wellness and Safety Happen!





[Home](#) > [Fraud Investigation Policy](#) > **Administrative Penalties**

## **Public Assistance Fraud (PAFS)**

### **Fraud Prevention Policy**

#### **Income Maintenance Manual**

#### **Chapter II Administrative Requirements Part D Fraud & Intentional Program Violations**

##### **11.0.0 Administrative Penalties**

Administrative disqualification hearing (ADH) is the administrative process for determining an intentional program violation (IPV).

##### **11.1.0 When to Use ADH**

You may request an ADH when you have sufficient documentary evidence that a person or group has intentionally violated the program requirements. An ADH may be initiated regardless of the individual's current eligibility for the W-2, AFDC and/or Food Stamp Program. Consider referring a case to an ADH when at least 1 of these conditions is met:

1. You believe the facts for the case don't warrant criminal prosecution.
2. The case does not meet the local prosecution referral criteria.
3. A person referred for prosecution is declined by the DA.
4. The same person was previously referred for prosecution but no action was taken (within a reasonable period of time) and the referral was formally withdrawn.

##### **11.2.0 Relationship to Fair Hearings**

An ADH, like fair hearings (II-G), are held by staff of the Department of Administration (DOA), Division of Hearings and Appeals (DHA). An ADH differs from a fair hearing in these ways:

1. The ES or W-2 agency, not the assistance group (AG) or the accused individual, requests the hearing.
2. A representative of the agency will present the evidence supporting the request for the ADH and the alleged IPV.
3. There is no time limit within which an ADH must be requested.
4. The timely notice (Notice of Administrative Disqualification Hearing) is measured from the date of the hearing.

##### **11.2.1 Required Evidence**

The evidence for a finding of IPV in an ADH is the same as for determining an issue in

a fair hearing. The level of proof for the evidence in both hearings must be "clear and convincing." "Clear and convincing" means:

1. Clear and explicit;
2. So clear as to leave no substantial doubt;
3. Sufficiently strong to demand the unhesitating assent of every reasonable mind; or
4. Reasonable certainty.

### **11.3.0 Combined Hearing**

An ADH to determine an IPV in all benefit programs can be combined into a single ADH if the alleged IPV results from the same eligibility factors. If the AG requests a fair hearing for current case actions involving reduced Medical Assistance and food stamp benefits or claims to recover overpayments/over issuance's that arise from the same factors supporting the IPV allegations, the Fair Hearings and the ADH may be combined.

In spite of differences between them, a Fair Hearing and a benefit program ADH may be combined into a single hearing if:

1. The factual issues arise out of the same, or related circumstances; and,
2. The AG head of household and/or the individual accused of committing the IPV is given prior notice that the hearings will be combined.

### **11.4.0 Rules for Combined Hearing**

The more stringent rules will apply when regulations between the 2 types of hearing differ. The time limits for ADH will be used, not those for a Fair Hearing. The AG may waive the 30-day notice requirement for the ADH.

### **11.5.0 Client Notices Response**

Proper notices **must** be sent to benefit recipients.

#### **11.5.1 Notice of Decision**

For open cases: (Negative Notice)

1. If the case is currently in open status and the fraud investigation report verifies conditions supporting the allegation of an IPV which currently justify a reduction in benefits or case closure, the appropriate case action should be taken immediately and a Negative Notice of Decision should be sent accordingly to the AG.
2. The Negative Notice of Decision must provide all the information specified per IMM-I-B-13.0.0, including the client's rights to a fair hearing and instructions on filing a timely fair hearing request.

If the case is currently closed and the conditions supporting the IPV allegation warrant establishing a claim for the recovery of an overpayment/over issuance, the Agency should send the AG the appropriate Notices of Over issuance/Overpayment and a Repayment Agreement forms.

#### **11.5.2 Notice of Administrative Disqualification Hearing**

Provide a written notice to the individual alleged to have committed the program

violation at least 30 days prior to the date of the disqualification hearing. If the case is currently open and the fraud investigation report causes the ES/W-2 Agency to take immediate negative action toward the case, the agency may send the Notice of Administrative Disqualification Hearing along with the Negative Notice of Decision.

1. The date, time, and location of the hearing.
2. The allegation(s) against the individual, including a statement that the agency believes benefits were received by the accused individual ( or that the individual attempted to receive benefits ) by intentionally violating a benefit program rule.
3. A summary of the evidence supporting the allegation(s) of an IPV, including:
  - a. The period during which an overpayment was received.
  - b. The amount of the overpayment.
  - c. A statement informing the individual of his/her right to examine the evidence and instructions on how and where the evidence can be examined.
4. A warning that the individual's failure to appear at the ADH without good cause will result in a decision by the hearing officer based solely on the information provided by the local agency at the hearing;
5. A statement that the individual may request a postponement of the hearing provided that such request is made to the Department of Administration, Division of Hearings and Appeals (DHA) at least 10 days in advance of the scheduled hearing, with the following restrictions:
  - a. The hearing shall not be postponed for more than a total of 30 days.
  - b. The number of postponements shall be limited to one.
6. A statement that the individual will have 10 days from the date of the scheduled hearing to present to the Division of Hearings and Appeals (DHA) good cause for failure to appear in order to receive a new hearing.
7. A description of the penalties that can result from a determination that the individual has committed an intentional program violation and a statement of which penalty is applicable to the individual.
8. A statement that the hearing does not preclude the District Attorney from prosecuting the individual for an intentional program violation in a civil or criminal court action, or from the agency collecting an overpayment.
9. A statement that the individual and remaining members of the AG group will be responsible for repayment of the overpayment.
10. A listing of individuals or organizations that provide free legal representation to individuals alleged to have committed intentional program violations.
11. A statement that the accused individual and the head of household for the AG may sign an attached waiver agreement to waive their rights to appear at an ADH.
12. An explanation of the consequences for the accused individual and the AG if he/she signs and returns the attached waiver agreement form for the ADH.
13. A statement of the accused individual's right to remain silent concerning the charge(s) and that anything said or signed by the Disqualification individual concerning the charge(s) may be used against him or her in a court of law.
14. A telephone number and, if possible, the name of the person to contact for additional information.

#### **11.5.2.1 Mailing Notice of ADH**

All hearings are scheduled by the Division of Hearings and Appeals (DHA). A Notice of Administrative Disqualification Hearing should be sent to the group by the agency so that it is received 30 days prior to the date for which the hearing is scheduled. The notice should be mailed using certified mail, restricted delivery, return receipt requested. Proofs of mailing should be kept in the case record. Send a Waiver of Administrative Disqualification Hearing with the Notice of Administrative Disqualification Hearing. A copy of the Notice of ADH should also be sent to DHA. For FS-only cases, the agency has the option to mail the advance notice either first class or by certified mail return receipt. If the notice is sent by first class mail and is undeliverable, the ADH may still be held.

#### **11.5.3 Waiver of The Notice of Administrative Disqualification Hearing**

Hearing must include a statement that s/he may waive the right to appear at an ADH. Send a copy of the Waiver of Disqualification ADH Agreement with the Notice of ADH. The Waiver of Administrative Disqualification Hearing must include:

1. The date that the signed waiver must be received by the agency.
2. A signature block for the accused individual.
3. A statement that the head of household must also sign the waiver if the accused individual is not the head of household.
4. A signature block for the head of household.
5. A statement of the accused individual's right to remain silent concerning the charge(s) and that anything said or signed by the individual concerning the charge(s) may be used against him or her in a court of law.
6. The fact that waiver of the individual's right to appear at a disqualification hearing will result in a disqualification penalty and a reduction in the assistance payment for the appropriate period even if the accused individual does not admit to the facts as presented by the agency.
7. An opportunity for the accused individual to specify whether or not he or Administrative she admits to the facts as presented by the agency.
8. A statement of the fact that the remaining members of the household or AG, if any, will be responsible for repayment of the resulting AFDC, W-2 and/or Food Stamp claim amount.

#### **11.5.3.1 Disqualification When the individual waives his or her right to appear at a disqualification**

*Required* hearing, the disqualification and appropriate reduction of assistance shall result regardless of whether the individual admits or denies the charges. The agency shall immediately upon receipt of the IPV determination via the waiver agreement or an ADH determination. CARES will calculate the appropriate disqualification period and generate the appropriate notices to the recipient and case head. For FS disqualification's, CARES will calculate the appropriate disqualification period and impose that disqualification within 45 days from the data of the IPV determination.

#### **11.6.0 Administrative Disqualification Hearing**

The ADH is scheduled by the Department of Administration, Division of Hearings and Appeals (DHA).

#### **11.6.1 Presiding Officer**

The ADH will be presided over by a hearing officer from the Department of Administration, Division of Hearings and Appeals.

### **11.6.2 Client Rights**

The individual, or his/her representative shall have adequate opportunity to:

1. Examine the contents of his/her case file, and all documents and records to be used by the agency at the hearing, at a reasonable time before the date of the hearing, and during the hearing; and to receive a copy of material pertinent to the case from the file at no charge by the agency;
2. Present his/her case him/herself or with the aid of a representative;
3. Bring witnesses;
4. Submit evidence to establish all pertinent facts and circumstances;
5. Advance any arguments without undue influence; and
6. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

### **11.6.3 Burden of Proof**

A representative of the Agency must attend the ADH to submit clear and convincing evidence to prove its allegations of Intentional Program Violation against the AG member. Even if the AG member or his/her representative fails to attend the ADH, the Agency must present clear and convincing evidence that the AG member committed an Intentional Program Violation in order for the Hearing Officer to determine that an IPV was committed.

### **11.6.4 Selecting Evidence**

The Agency must determine the essential facts in a case. This is best done by asking what facts need to be shown in order to prove the case:

1. Review the regulations to determine what is required.
2. Analyze the case to see if there are any other facts that must be established.
3. Obtain the best evidence to prove each fact.

The agency evidence on each and every essential fact must meet the test of clear and convincing. The burden of proof is placed only on the agency; the client has no burden of proof that has to be met. If the agency fails to meet the level of clear and convincing proof on each and every fact, the hearing officer is likely to rule against the agency.

### **11.6.5 Presenting Evidence**

Present evidence chronologically, clearly, and concisely.

### **11.6.6 Privileged Information**

Keep in mind the provisions of §905.15, Wis. Stats:

"Privilege in use of federal tax return information (1) An employee of the department of health and family services, the department of workforce development or a county department under s. 46.215, 46.22 or 46.23 or a member of a governing body of a federally recognized American Indian tribe who is authorized by federal law to have access to or awareness of the federal tax return information of another in the performance of duties under s. 49.19 or 49.45 or 7 USC 2011 to 2029 may claim

privilege to refuse to disclose the information and the source or method by which he or she received or otherwise became aware of the information. (2) An employee or member specified in sub. (1) may not waive the right to privilege under sub. (1) or disclose federal tax return information or the source of that information except as provided by federal law."

### **11.7.0 ADH Decision**

Decisions made by the hearing officer shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony, exhibits, or official reports introduced at the hearing, together with all papers and requests filed in the proceeding, and the decision of the hearing office shall be made available to the individual or to his or her representative at a reasonable time and place. Decisions made by the hearing officer will:

1. Include a decision memorandum summarizing the facts and identifying the regulations supporting the decision.
2. Be made within 90 days of the date of the Notice of Administrative Disqualification Hearing.

### **11.7.1 Notice of Disqualification**

If the hearing officer finds that the individual committed an IPV, the agency will enter the IPV information into CARES as soon as possible following the determination and CARES will generate the necessary written notices to the individual prior to disqualification. The notice shall inform the individual of the decision and the reason for the decision. Only after 3 IPV's can one be disqualified from W-2. W-2 is then denied for all individuals in the AG not just a participant in the group.

### **11.7.2 Legal Relief**

Any period for which a Food Stamp Program disqualification penalty is imposed shall remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction. AFDC recipients who have been disqualified previously for IPV receive a clean slate under W-2. Previous disqualification's do not carry over.

### **11.8.0 Disqualification Through Consent Agreement**

A person referred to the county District Attorney's Office to be prosecuted for committing a W-2, AFDC, or FS IPV may be disqualified from W-2 or FS after signing a consent agreement. A consent agreement is known as a "Deferred Prosecution Agreement", "Pre-trial Agreement", "Pre-charge Agreement" or other name, as long as the required procedures listed below are adhered to.

1. The agency shall have an agreement with its county prosecutor which provides for advance written notification to the individual of the consequences of signing the consent agreement.
2. Advance written notice to the accused individual of the consequences of signing such an agreement means that a copy of the consent agreement must be given or sent to the individual at least 10 days prior to any face-to-face meeting between the individual and the DA's office which is initiated by the DA's Office or its agents for the purpose of resolving the issues prior to any formal proceedings related to the adjudication of the allegations. The written notice must include the following:
  - a. A statement for the accused individual to sign that he or



she understands the consequences of signing the agreement, along with a statement that the head of household must also sign the agreement if the accused individual is not the head of household;

- b. A statement that signing the agreement will result in a reduction in benefits and/or Food Stamp allotments for the appropriate period(s); and
- c. A statement of which disqualification period(s) will be imposed as a result of the accused individual signing the agreement.

3. A court (judge) must confirm (sign) a Pretrial Agreement.

Enter the IPV information into CARES, which will then provide a written notice to the individual which specifies the period of disqualification (which begins no later than the first day of the second month following the date of notice), and the amount of benefits the group will receive during the disqualification period. If the court specifies the date for initiating the disqualification period, the agency shall enter the court ordered date into CARES to override the system's default calculations regarding the disqualification period. With respect to imposing FS disqualification's, CARES will impose the disqualification period within 45 days of the IPV decision.

### **11.9.0 Penalties**

A person who, on the basis of a plea of guilty or no contest or otherwise, is found to have committed an intentional program violation by an ADH or by a State or Federal court will be treated in the following manner:

1. For Food Stamps, the agency shall not take the individual's needs into account when determining the assistance unit's need and amount of assistance. Any resources and income of the disqualified individual will be considered available to the assistance unit. The individual's needs will not be taken into account for 12 months upon the first occasion of any such offense; 24 months upon the second occasion of any such offense; and permanently upon the third or a subsequent occasion of any such offense.
2. Any period for which a disqualification penalty is imposed shall remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction but in no event shall the duration of the period for which such penalty is imposed be subject to review.
3. A disqualification penalty imposed by one county/tribal agency must be used to determine the appropriate disqualification penalty for the individual by another county/tribal agency. Where an individual with a prior violation(s) moves from one state to another and has been found to have committed an intentional program violation(s), the local agency may impose the penalty based on the number of such violations committed in other states.
4. The disqualification penalties shall be in addition to, and cannot be substituted for, any other sanctions or penalties which may be imposed by law for the same offenses.
5. The agency must provide all applicants with a written notice of the disqualification penalties for fraud at the time of application.

Disqualify only the person who was found to have committed the IPV or who signed the waiver, not the entire household for food stamps.

### **11.9.1 W-2 Penalties**

?49.151(2) describes W-2 IPV:  
"If a court finds or it is determined after an administrative hearing that an individual who is a member of a Wisconsin works group applying for or receiving benefits under ?49.141 to ?49.161, for the purpose of establishing or maintaining eligibility for those benefits or for the purpose of increasing the value of these benefits, has intentionally violated, on three separate occasions, any provision in ?49.141 to ?49.161 or any rule promulgated under those sections, the Wisconsin works agency may permanently deny benefits under ?49.141 to ?49.161 to the individual." This provision does not end eligibility until the third occurrence of IPV. However, after 3 separate findings, the W-2 agency may permanently deny payments to the entire assistance group. There is no "child-only" grant provision under W-2 for children of adults found guilty of IPV.

### 11.9.2 FS Penalties

Anyone found guilty of IPV through an ADH is ineligible for F S for:

1. 12 months for the first violation;
2. 24 months for the second violation;
3. Permanently for the third violation.

Disqualify only the person found guilty of IPV. Even if s/he isn't eligible for assistance at the time you receive the ADH decision, enter the IPV information into CARES immediately so that CARES can apply the disqualification period immediately. Along with the Notice of Disqualification, CARES will automatically send an agreement letter for restitution that will provide the following:

1. The amount owed.
2. The reason for the claim.
3. The period of time the claim covers.
4. The amount of any offsetting you did that reduced the claim.
5. The types and terms of each restitution schedule you offer the group.
6. The date by which the group must report its restitution choice to you.
7. A statement that the group's failure or refusal to make a restitution choice will result in your collection by a reduction of their benefits.
8. An area for the group to indicate its choice of restitution schedule with an area for a representative signature.
9. The group's right to a fair hearing if the individual disagrees with the claim amount.
10. A statement that the group may request re-negotiation of its chosen restitution schedule if its financial circumstances change.

[Next](#) — 12.0.0 Disqualified Recipient Report

[Back](#) — 10.0.0 Fair Hearings

Last Revised: *December 20, 2002*

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[Back to top](#) | [About](#) | [Contact](#) | [Disclaimer](#) | [Privacy Notice](#) | [Feedback](#)



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[Home](#) > [Fraud Investigation Policy](#) > **Disqualified Recipient Report**

## Public Assistance Fraud (PAFS)

### Fraud Prevention Policy

#### [Income Maintenance Manual](#)

#### **Chapter II Administrative Requirements Part D Fraud & Intentional Program Violations**

##### **12.0.0 Disqualified Recipient Report**

IPV reporting is completed upon entry of the IPV information into the appropriate screens on CARES. IPV's for the AFDC program are entered on the AIAP screen. IPV information for the Food Stamp program are entered on the AIIP screen. IPV information for W-2 is to be determined.

##### **12.1.0 Reporting Requirement**

Upon entry of the IPV data, CARES determines the appropriate sanction period for the individual and generates the necessary notices to the sanctioned recipient and to the concerned case head, if different.

CARES also uses the data entered for FS IPV's to update the national Disqualified Recipient System maintained by USDA's Food and Consumer Service (FCS).

[Next](#) — 13.0.0 Office of Inspector General

[Back](#) — 11.0.0 Administrative Penalties

Last Revised: *December 20, 2002*

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[Back to top](#) | [About](#) | [Contact](#) | [Disclaimer](#) | [Privacy Notice](#) | [Feedback](#)



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- Staff Directory
- FAQ's about PAF
- FAQ's about Fraud Investigation
- Contracts
- Fraud Prevention Policy
- Fraud Investigation Policy
- Chapter 49 Fraud Plan
- Fraud Investigative Service Invoice
- Fraud Programs
- Investigation Contract
- W-2 Fraud Statute

[Home](#) > [Fraud Investigation Policy](#) > [Office of Inspector General](#)

## Public Assistance Fraud (PAFS)

### Fraud Prevention Policy

#### [Income Maintenance Manual](#)

#### **Chapter II Administrative Requirements Part D Fraud & Intentional Program Violations**

#### **13.0.0 Office of Inspector General (OIG)**

The Office of Inspector General (OIG) is located in the Division of Unemployment Insurance (DUI) in the Department of Workforce Development (DWD).

OIG is located at:

Room 311X  
General Executive Facility (GEF) 1  
201 East Washington Avenue, Madison

OIG mailing address is:

Division of Unemployment Insurance  
Office of Inspector General  
P.O. Box 7905  
Madison, Wisconsin 53707-7905

Phone number: 608-264-6077  
Fax number: 608-266-7054

#### **13.1.0 Staff Resources**

OIG staff are available to assist you with fraud prevention and related efforts. Direct inquires about:

1. Front-End Verification (FEV), early detection/prevention, and investigation program information to:

Charles Billings, Fraud Analyst  
608-266-9246

Don Pedersen, Fraud Specialist  
608-266-7239

## 2. Computer matches and fraud reporting to:

Barry Chase, Match Coordinator  
608-266-1849

[Next](#) — Chapter 49 1998 Fraud Plan Index

[Back](#) — 12.0.0 Disqualified Recipient Report

Last Revised: *December 20, 2002*

---

[Back to top](#) | [About](#) | [Contact](#) | [Disclaimer](#) | [Privacy Notice](#) | [Feedback](#)



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